

REMARKS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments and remarks herewith, which place the application into condition for allowance.

Applicants filed a Notice of Appeal and a petition for one month extension of time on May 24, 2004 (was received by the USPTO on May 27). Pursuant to the provisions of 37 C.F.R. §§ 1.17(a) and 1.136(a), Applicants now petition the Assistant Commissioner to extend the time period for Applicants to respond to the outstanding Office Action by five (5) months, i.e., up to and including December 27th, 2004. A check for \$2160.00 is enclosed with this paper. Concurrently with the filing of this Petition, Applicant is filing an RCE.

Applicants authorize the Director to charge any additional fee for consideration of this paper, or credit any overpayment, to Deposit Account No. 50-0320.

The indicative that claims drawn to elected iodosulfuron species are allowable is greatly appreciated.

Claims 19-70 are pending in the application. In order to advance prosecution and to place the claims in condition for allowance, Applicants cancel claims 19-70 and replace them with claims 71-106 without prejudice, admission, surrender of subject matter or intention of creating estoppel as to equivalents. The newly added claims are directed to specific phosphonium and sulfonium salts of a sulfonylureas which are structurally and functionally similar to the elected iodosulfuron species, and find support in cancelled claims 19-70 and throughout the specification. Thus, no new matter had been added.

This invention provides *inter alia* herbicidal formulations, in particular emulsifiable concentrate (EC) formulations, comprising specific phosphonium and sulfonium salts of sulfonylureas. Moreover, Applicants unexpectedly discovered that the instantly claimed

sulfonylurea salts could be formulated in various ways, e.g. as liquid formulations such as EC formulations (see specification, pages 34-36, Table I on pages 25 and 35) or as solid formulations such as WG formulations (see pages 34-36 of the specification). These formulations, in particular EC formulations, have high chemical stability and exhibit “higher loading” (a higher concentrate) of the formulation of active compound salts. In contrast, thereto neutral sulfonylureas or their metal salts cannot be formulated with such flexibility.

Claim 70 stands rejected under 35 U.S.C. § 112, second paragraph, as allegedly being incomplete for omitting essential steps. Claims 21-44 and 54-69 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 42 and 43 stand rejected under 35 U.S.C. § 112 as allegedly being improperly multiply dependent from both claims 19 and 21, and claim 44 is allegedly dependent upon itself. Claims 21-44 and 54-69 stand rejected under 35 U.S.C. § 112 because claim 21 is allegedly unclear in its recitation of several substituent groups which are not part of the structure of compound Ia. Applicants urge that in view of the cancellation of claims 1-70, the above listed rejections are now moot.

Claims 19, 20, 42-45, 51, 53, and 54 stand rejected under 35 U.S.C. 102(a), (b), and (e) as being allegedly anticipated by or, in alternative, under 35 U.S.C. 103(a) as obvious over Mayer et al. (US 6,413,911, “Mayer”). The rejection is traversed. Applicants urge that Mayer does not teach, suggest or motivate a skilled artisan to practice the instant invention.

Specifically, Mayer relates to neutral sulfonylureas or their metal salts and does not teach specific phosphonium and sulfonium salts of a sulfonylureas which are structurally and functionally similar to the trimethylsulfonium salt of iodosulfuron. Moreover, Mayer does not suggest a skilled artisan that instantly claimed sulfonylurea salts may be formulated into highly stable liquid or solid formulations. Thus, Mayer does not anticipate instant claims and does not

render the instant invention obvious. Accordingly, reconsideration and withdrawal of these rejections are requested.

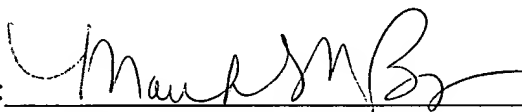
Claims 19-70 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Hacker et al. (PCT WO 96/41357) in view of Gesing et al. (US 6,451,737) and Mayer et al. (US 6,413,911). Applicants urge that since neither Hacker alone or in view of Gesing and Mayer suggests the skilled artisan that specific phosphonium and sulfonium salts of sulfonylureas can be formulated both as liquid and solid formulations, the rejection is traversed.

The Office Action states that "it would have been *prima facie* obvious to one skilled in the art at the time the invention was made to have made the trimethylsulfonium salt of sulfonylurea herbicides because this herbicide was known in the art and because the trimethylsulfonium salts, like the more common examples of sodium, potassium, and ammonium salts, were known in the art " (Office Action, page 6). Applicants respectfully disagree.

Applicants urge that the instant invention exhibits unexpected results and superiority over the art and, thus, rebuts any holding of *prima facie* obviousness. Applicants respectfully direct the Examiner's attention to instant examples at pages 35 and 36 of the specification, and to the Declaration of Dr. Gerhard Schnabel, which was submitted together with the response to the Office Action filed on September 23, 2003. Specifically, Applicants remind the Examiner that it was surprisingly and unexpectedly discovered that the instantly claimed phosphonium and sulfonium salts of sulfonylureas could be formulated as liquid formulations and as solid formulations. In contrast thereto, neutral sulfonylureas or their metal salts, as purported in the documents relied upon in the Office Action, cannot be formulated with such flexibility. The claimed invention, therefore, is unobvious. Therefore, reconsideration and withdrawal of the Section 103 rejections based on the preceding documents are respectfully requested.

Finally, at the end of the Office Action, the Examiner states that claims drawn to the elected species will be allowable. However, because the "claims are indefinite, it cannot be determined which, if any, of the claims actually read specifically, and only, on the elected species" (Office Action, page 6). Applicants urge that the instant claims are now directed *inter alia* to the specific phosphonium and sulfonium salts that are structurally and functionally similar to trimethylsulfonium salt of iodosulfuron and thus, the application is in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited.

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